

REMARKS

Applicant has carefully studied the outstanding Official Action mailed on February 11, 2008. This response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

Claims 1, 2, 5, 8-10, 12, 14 and 16 stand rejected under 35 USC §102(b) as being anticipated by Kuslich (US 5059193).

Claim 3 stands rejected under 35 USC §103(a) as being unpatentable over Kuslich.

Claim 4 stands rejected under 35 USC §103(a) as being unpatentable over Kuslich in view of Scholten et al. (US 4969888).

Claims 6, 11 and 13 stand rejected under 35 USC §103(a) as being unpatentable over Kuslich in view of Yuan et al. (US 2005/0143818).

Claims 7 and 16 stand rejected under 35 USC §103(a) as being unpatentable over Kuslich in view of Foley et al. (US 6676665).

Claims 15 and 17 stand rejected under 35 USC §103(a) as being unpatentable over Kuslich in view of Cragg (US 2002/0016583).

In the rejection over Kuslich, Examiner states “Kuslich discloses...a sheath compactor (18) adapted to slide a portion of said sheath along said rod from a first position to a second position, wherein in the first position said sheath is in a non-expanded orientation and in the second position said sheath is in an expanded orientation wherein folds of said sheath expand radially outwards from said outside portion of said rod (see Figures 1-2B, col. 3 line 60 through col. 4, line 56).”

Applicant respectfully traverses this rejection. First, Kuslich has no folds; rather the ribs expand outward with no folds formed whatsoever. Second, Kuslich does not have a sheath, that is, a covering. Instead, the ribs are discrete members that bulge outwards and in the expanded orientation they do not cover the inner rod as a sheath does. Kuslich recognizes the significance of the discrete ribs. In col. 9, lines 18-22, Kuslich states: “In use of the embodiment of FIG. 1, there is a concern that the ribs 26 could sink into soft bone material of the patient’s vertebra. To prevent this, a fiber netting 200 (preferably of nylon or polyethylene) surrounds the body portion 12.” Note that Kuslich recognizes the disadvantage of the discrete ribs possibly sinking into tissue. Kuslich teaches away from the continuous sheath of the instant invention and instead uses the netting to cover the discrete ribs.

Although the claims as is are deemed to define over Kuslich for the reasons outlined above, for the purposes of clarity claim 1 has been amended to recite the above differences,

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namely, “wherein said elastomeric sheath surrounds the outside portion of the rod both in the non-expanded and expanded orientations and wherein said folds in the expanded orientation comprise a plurality of crests and troughs”. The crests and troughs of the folds are clearly shown in the drawings and do not constitute new matter.

New claim 18 has been introduced reciting further patentable features. Accordingly all of the rejections are deemed overcome and claims 1-18 are deemed allowable.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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